

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA**

BUDDY GILL,

Plaintiff,

vs.

**SORRELLS FUNERAL HOME, INC.,
and TERRY G. SORRELLS,**

Defendants.

§
§
§
§
§
§
§
§
§
§

Case No.: 1:06-cv-718

MOTION TO DISMISS

COME NOW, the Defendants, Sorrells Funeral Home, Inc., and Terry G. Sorrells, through counsel, and pursuant to Rule 10 of the Federal Rules of Civil Procedure, hereby move this court to strike or dismiss paragraph 23 of Plaintiff's Complaint in that the Plaintiff seeks to improperly include a breach of contract and/or unjust enrichment count within the claim under the Fair Labor Standards Act.

Rule 10(b) states that each claim should be stated in a separate count for purposes of clarity. If Plaintiff seeks to maintain a claim for breach of contract and/or unjust enrichment, then that cause of action should be set out separately.

WHEREFORE, the Defendants pray that this court strike or dismiss paragraph 23 from the Plaintiff's Complaint.

Respectfully submitted,

s/ Elizabeth B. Glasgow

Elizabeth B. Glasgow ASB-8348-S58E
Attorney for Defendants
Farmer, Price, Hornsby & Weatherford, L.L.P.
100 Adris Place (36303)
Post Office Drawer 2228
Dothan, Alabama 36302
Tel: 334/793-2424
Fax: 334/793-6624
Email: eglasgow@fphw-law.com

Of Counsel:

S. Mark Andrews
Attorney for Defendants
Morris, Cary, Andrews, Talmadge & Jones, LLC
P. O. Box 1649
Dothan, Alabama 36302
Tel: (334) 792-1420
Fax: (334) 673-0077
Email: MAndrews@MCATLaw.com

CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

William R. Davis, Esq.
Attorney for Plaintiff
Davis & Herrington, L.L.C.
Park Place Center
8650 Minnie Brown Road, Suite 150
Montgomery, Alabama 36117

s/ Elizabeth B. Glasgow

Of Counsel